vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.622 OF 2002

Baburao Gangaram Chavan
Convict No.C/12570
presently lodged at Yerawada
Central Prison, Pune
Maharashtra ... Appellant

V/s.

The State of Maharashtra ... Respondent

Mr.B.G. Tangsali for Appellant
Mrs.V.R. Bhosale, APP, for Respondent

CORAM: **V.G. PALSHIKAR, Ag. C.J. & SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 22, 2006**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. The Appellant has been charged for having murdered one Shantabai Baburao Chavan on 26.12.1999. He has been found guilty of the offence by the Additional Sessions Judge, Karad and convicted under section 302 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life. He has also been directed to pay fine of Rs.5,000/-.

2. According to the prosecution, the victim was the mistress or the second wife of the appellant. They were residing together. The appellant suspected that the victim was stealing money from the sale proceeds of the milk of the buffaloes owned by the appellant. The prosecution has claimed that the appellant and the

deceased had an altercation on 26.12.1999 about 11.30 in the morning when the appellant had assaulted Shantabai with the fist blows and kicks, resulting in her death. It is the case of the prosecution that some persons from the village had witnessed this quarrel between the two. The body of the victim was found near a stream behind Janai temple in the village on 27.12.1999. The prosecution initially lodged an ADR on 27.12.1999. The appellant was arrested after the complaint was lodged with the police.

2. The prosecution examined nine witnesses to establish the guilt of the appellant. PW1, PW2 and PW3 were supposedly eye witnesses who have turned hostile. All these witnesses have deposed that they saw the appellant and the deceased quarrel on 26.12.1999 at about 11.30 am in a field close to theirs. PW1 has deposed that he convinced them to patch things up and moved away with PW2. PW2 who corroborates the deposition of PW1 has turned hostile. PW3 has also turned hostile.

3. The complaint has been lodged by PW8, the Police Patil, who has deposed that he was informed that the dead body of a female was lying near the stream on 26.12.1999 at about 9 pm. He went to the spot the next morning and found the dead body on the bank of the stream. He identified the body as that of Shantabai.

On the basis of the report of this witness, an ADR was registered by PW8. PW7 has deposed that on further investigations by him he lodged the complaint against the appellant. The appellant was arrested by PW9, the Investigating Officer on 28.12.1999.

4. PW4 is the Doctor who conducted the postmortem on the deceased. He has described the nature of injuries sustained by the victim. In the opinion of this witness the death was caused due haemorrhagic shock on account of right hemothorax with bilateral fracture of ribs. This witness has stated that the fracture of the 10th, 11th and 12th ribs on the right side and the 10th and 11th rib on the left side are fatal injuries. This witness who conducted the postmortem on 27.12.1999, has estimated that the death occurred approximately 24 to 48 hours before the postmortem examination. This witness has conceded that if a person fell on her ribs while passing through a stream then the injuries described at serial Nos.2 to 6 in the postmortem report are possible. These injuries are minor injuries. The witness has stated that the injuries described at serial Nos.7 and 8 could have been caused with a hard blunt object and are fatal.

5. PW5 is the person who has prepared the map of the spot and has proved it.

6. On a consideration of the evidence before us, we find it difficult to accept the case of the prosecution. All the eye witnesses have turned hostile. The only evidence that has been elicited from them is that there was a quarrel between the appellant and the deceased at around 11.30 am on 26.12.1999.

7. The other information which the prosecution has been able to elicit from these witnesses is that the appellant suspected the deceased of stealing from the sale proceeds of the milk. There is no evidence at all on record to establish that the appellant had in fact assaulted the deceased. The statements recorded by the police of PW1, PW2 and PW3 have been disowned by these witnesses. However, the Investigating Officer, PW9, who was examined has deposed that the statements of these witnesses were recorded as per their disclosures.

8. The body of the deceased was found near the stream on 26.12.1999. However, it was identified only the next morning by the Police Patil, PW8. The body was seen initially at 9 at night by somebody who disclosed this fact to PW8.

9. Obviously, therefore, the appellant who resided together with the victim was aware that the victim was missing on the night of 26.12.1999. He however, did not bother the lodge any police complaint or disclose this

fact to anybody or to look for her. However, this in our opinion, would not necessarily mean that it is the appellant who had killed the deceased. There is no evidence at all on record indicating that somebody had witnessed the appellant dealing fist blows and kicks to the deceased. The so called eye witnesses who have turned hostile have only deposed regarding the quarrel which occurred between the appellant and the deceased. In our opinion, this circumstance would not be sufficient to infer that it was the appellant who had killed the deceased.

10. On reappreciation of the evidence we find that the prosecution has failed to prove its case against the appellant. The impugned judgment is set aside. The appellant is therefore, acquitted and he be released forthwith, if not otherwise required in law.

11. The fees of the advocate appearing for the appellant and the Assistant Public Prosecutor are quantified at Rs.2,000/- each.